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18 **UNITED STATES DISTRICT COURT**
19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN JOSE DIVISION**

21 **FRANCISCO VALDEZ, et al.**

22 Plaintiffs,

23 vs.

24 **CITY OF SAN JOSE, et al.,**

25 Defendants.

Case No. C09-00176 RMW

**STIPULATED PROTECTIVE ORDER;
AND ORDER**

Complaint Filed January 14, 2009

26 **1. PURPOSES AND LIMITATIONS**

27 Disclosure and/or discovery activity in this action is likely to involve production of
28 confidential, proprietary, or private information for which special protection from public
disclosure and from use for any purpose other than for settlement negotiations would be
warranted. Accordingly, the parties hereby stipulate to the following Stipulated Protective
Order (hereinafter "Order"). The parties acknowledge that this Order does not confer blanket

1 protections on all disclosures or responses and that the protection it affords extends only to
2 the limited information or items that are entitled under the applicable legal principles to
3 treatment as confidential. The parties further acknowledge, as set forth in Section 10, below,
4 that this Order creates no entitlement to file confidential information under seal; Civil Local
5 Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will
6 be applied when and if a party seeks permission from the court to file material under seal.

7 **2. DEFINITIONS**

8 **2.1 Party:** any party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and outside counsel (and their support staff).

10 **2.2 Disclosure or Discovery Material:** all items or information, regardless of the
11 medium or manner generated, stored, or maintained (including, among other things,
12 testimony, transcripts, or tangible things) that are produced or generated in disclosures for
13 the purposes of potential settlement or responses to discovery in this matter.

14 **2.3 "Confidential" Information or Items:** information (regardless of how
15 generated, stored or maintained) or tangible things that qualify for protection under
16 standards developed under F.R.C.P. 26(c).

17 **2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:**
18 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or
19 nonparty would create a substantial risk of serious injury that could not be avoided by less
20 restrictive means.

21 **2.5 Receiving Party:** a Party that receives Disclosure or Discovery Material from a
22 Producing Party.

23 **2.6 Producing Party:** a Party or non-party that produces Disclosure or Discovery
24 Material in this action.

25 **2.7 Designating Party:** a Party or non-party that designates information or items
26 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly
27 Confidential — Attorneys' Eyes Only."

28 **2.8 Protected Material:** any Disclosure or Material that is designated as
"Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

1 **2.9. Outside Counsel:** attorneys and their support staff who are not employees of a
 2 Party but who are retained to represent or advise a Party in this action.

3 **2.10 House Counsel:** attorneys and their support staff who are employees of a
 4 Party.

5 **2.11 Counsel (without qualifier):** Outside Counsel and House Counsel (as well as
 6 their support staffs).

7 **2.12 Expert:** a person with specialized knowledge or experience in a matter
 8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
 9 witness or as a consultant in this action and who is not a past or a current employee of a Party
 10 or of a competitor of a Party's and who, at the time of retention, is not anticipated to become
 11 an employee of a Party or a competitor of a Party's. This definition includes a professional jury
 12 or trial consultant retained in connection with this litigation.

13 **2.13 Professional Vendors:** persons or entities that provide litigation support
 14 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
 15 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
 16 subcontractors.

17 **3. SCOPE**

18 The protections conferred by this Order cover not only Protected Material (as defined
 19 above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
 20 summaries, or compilations thereof, plus testimony, conversations, or presentations by
 21 parties or counsel to or in court or in other settings that might reveal Protected Material.

22 **4. DURATION**

23 Even after the termination of this litigation, the confidentiality obligations imposed by
 24 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
 25 court order otherwise directs.

26 **5. DESIGNATING PROTECTED MATERIAL**

27 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

28 Each Party or non-party that designates information or items for protection under this
 Order must take care to limit any such designation to specific material that qualifies under the

1 appropriate standards. A Designating Party must take care to designate for protection only
2 those parts of material, documents, items, or oral or written communications that qualify – so
3 that other portions of the material, documents, items, or communications for which protection
4 is not warranted are not swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
6 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
7 unnecessarily encumber or retard the case development process, or to impose unnecessary
8 expenses and burdens on other parties), expose the Designating Party to sanctions.

9 If it comes to a Party's or a non-party's attention that information or items that it
10 designated for protection do not qualify for protection at all, or do not qualify for the level of
11 protection initially asserted, that Party or non-party must promptly notify all other parties
12 that it is withdrawing the mistaken designation.

13 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
14 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
15 ordered, material that qualifies for protection under this Order must be clearly so designated
16 before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (apart from transcripts of
19 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top or
21 bottom of each page that contains protected material. If only a portion or portions of the
22 material on a page qualifies for protection, the Producing Party also must clearly identify the
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify,
24 for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

26 A Party or non-party that makes original documents or materials available for
27 inspection need not designate them for protection until after the inspecting Party has
28 indicated which material it would like copied and produced. During the inspection and before
the designation, all of the material made available for inspection shall be deemed "HIGHLY

CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top or bottom of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

(b) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a

1 Party does not waive its right to challenge a confidentiality designation by electing not to
2 mount a challenge promptly after the original designation is disclosed.

3 **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a Designating
4 Party's confidentiality designation must do so in good faith and must begin the process by
5 conferring directly (in voice to voice dialogue; other forms of communication are not
6 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
7 explain the basis for its belief that the confidentiality designation was not proper and must
8 give the Designating Party an opportunity to review the designated material, to reconsider the
9 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
10 designation. A challenging Party may proceed to the next stage of the challenge process only if
11 it has engaged in this meet and confer process first.

12 **6.3 Judicial Intervention.** A Party that elects to press a challenge to a
13 confidentiality designation after considering the justification offered by the Designating Party
14 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
15 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for
16 the challenge. Each such motion must be accompanied by a competent declaration that affirms
17 that the movant has complied with the meet and confer requirements imposed in the
18 preceding paragraph and that sets forth with specificity the justification for the confidentiality
19 designation that was given by the Designating Party in the meet and confer dialogue.

20 The burden of persuasion in any such challenge proceeding shall be on the Designating
21 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
22 question the level of protection to which it is entitled under the Producing Party's designation.

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a non-party in connection with this case only for
26 the purpose of prosecuting, defending or attempting to settle this litigation. Such Protected
27 Material may be disclosed only to the categories of persons and under the conditions
28 described in this Order. When the litigation has been terminated, a Receiving Party must
comply with the provisions of section 11, below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a location
 2 and in a secure manner that ensures that access is limited to the persons authorized under
 3 this Order.

4 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise
 5 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 6 disclose any information or item designated CONFIDENTIAL only to:

7 (a) the Receiving Party and its Outside Counsel of record in this action, as
 8 well as employees of said Counsel to whom it is reasonably necessary to disclose the
 9 information for this litigation and who have signed the "Addendum to Protective Order" that
 10 is attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the
 12 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
 13 signed the "Addendum to Protective Order" (Exhibit A);

14 (c) experts (as defined in this Order) of the Receiving Party to whom
 15 disclosure is reasonably necessary for this litigation and who have signed the "Addendum to
 16 Protective Order" (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters, their staffs, and professional vendors to whom
 19 disclosure is reasonably necessary for this litigation and who have signed the "Addendum to
 20 Protective Order" (Exhibit A);

21 (f) the author of the document or the original source of the information.

22 **7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"**
 23 **Information or Items.** Unless otherwise ordered by the court or permitted in writing by the
 24 Designating Party, a Receiving Party may disclose any information or item designated
 25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

26 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 27 employees of said Counsel to whom it is reasonably necessary to disclose the information for
 28 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
 attached hereto as Exhibit A;

(c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A)];

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
2 Protected Material to any person or in any circumstance not authorized under this Stipulated
3 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
4 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
5 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
6 made of all the terms of this Order, and (d) request such person or persons to execute the
7 "Addendum to Protective Order" that is attached hereto as Exhibit A.

8 **10. FILING PROTECTED MATERIAL.**

9 Without written permission from the Designating Party or a court order secured after
10 appropriate notice to all interested persons, a Party may not file in the public record in this
11 action any Protected Material.

12 **11. FINAL DISPOSITION.**

13 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
14 days after the final termination of this action, each Receiving Party must return all Protected
15 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes
16 all copies, abstracts, compilations, summaries or any other form of reproducing or capturing
17 any of the Protected Material. With permission in writing from the Designating Party, the
18 Receiving Party may destroy some or all of the Protected Material instead of returning it.
19 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
20 written certification to the Producing Party (and, if not the same person or entity, to the
21 Designating Party) by the sixty day deadline that identifies (by category, where appropriate)
22 all the Protected Material that was returned or destroyed and that affirms that the Receiving
23 Party has not retained any copies, abstracts, compilations, summaries or other forms of
24 reproducing or capturing any of the Protected Material.

25 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
26 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work
27 product, even if such materials contain Protected Material. Any such archival copies that
28 contain or constitute Protected Material remain subject to this Protective Order as set forth in
Section 4 (DURATION), above.

1 **12. MISCELLANEOUS**

2 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any person
3 to seek its modification by mutual assent by both parties.

4 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing
6 any information or item on any ground not addressed in this Stipulated Protective Order.
7 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
8 material covered by this Protective Order.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10
11 DATED: March 11, 2011 CITY OF SAN JOSE CITY ATTORNEYS OFFICE

12
13 By: /s/
Cliff Greenberg

14 Attorneys for Defendants

15
16 BUSTAMANTE, O'HARA & GAGLIASSO, P.C.
17 DATED: March 11, 2011

18 By: /s/
ANDREW V. STEARNS

19
20 Attorneys for Plaintiffs

21
22 **GENERAL ORDER 45(X)(B) STATEMENT**

23
24 Pursuant to General Order No. 45(X)(b), I hereby attest that concurrence in this
25 filing of this document has been obtained from Counsel Defendants.

26
27 By /s/
28 ANDREW V. STEARNS, ESQ.

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 31, 2011

Paul S. Grewal

~~Hon. Jeremy Fogel, Judge Presiding~~

~~United States District Court Judge~~

PAUL S. GREWAL

United States Magistrate Judge

EXHIBIT A

ADKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ (print or type full name), of
 _____ (print or type full address), declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Northern District of California in the
 case of *Valdez, et. al. v. City of San Jose, et.al., Cast No. C09-00176 RMW*. I agree to comply with
 and to be bound by all terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in the
 nature of contempt. I solemnly promise that I will not disclose in any manner any information
 or item that is subject to this Stipulated Protective Order to any person or entity except in
 strict compliance with the provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ (print or type full name) of
 _____ (print or type full address and telephone number) as my
 California agent for service of process in connection with this action or any proceedings
 related to enforcement of this Stipulated Protective Order.

DATE: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____